

No. 87-519

Supreme Court, U.S.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

GARY D. MAYNARD and the
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA,

Petitioners,

vs.

WILLIAM THOMAS CARTWRIGHT,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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WILLIAM THOMAS CARTWRIGHT,

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PETITIONERS' REPLY BRIEF

RESPONSE TO RESPONDENT'S COUNTER
STATEMENT OF CASE

A. Guilt-Innocence Proceeding

Although Respondent, hereinafter referred to as the "Defendant", contended that he was fired by the Riddles in January, 1982, Charma Riddle testified that Defendant was laid off from the Riddles' remodeling business

in December, 1981, due to lack of work and defendant moved to Nevada (Tr. 382; 394).

Circumstantial evidence established that the Defendant was in the Riddle home on May 4, 1982, prior to their arrival; the Riddles were away until 5:30-6:00 p.m.; at 11:13 a.m. a phone call to the Defendant's girlfriend was placed from the Riddle residence (Tr. 384-86).

Importantly, the Defendant did not turn himself immediately upon completion of his crimes as did defendant in Godfrey v. Georgia, 446 US 420, 425 (1980). He was observed standing in front of the Riddles' GMC Jimmy vehicle as the first police officer arrived at the scene in response to Charma Riddle's call for

help. The Defendant fled the scene, called his sister two days later and requested that she come get him. His sister's husband testified that they agreed to pick up the Defendant only if he would turn himself in to police (Tr. 192093; 438-39).

B. En Banc Opinion of the Tenth
Circuit Court of Appeals

In addition to reversing the United States District Court's denial of the Defendant's petition for a writ of habeas corpus as to his death sentence, the Tenth Circuit reversed its own three-judge panel decision affirming the denial of that relief. Cartwright v. Maynard, 802 F.2d 1203 (10th Cir. 1986).

C. Subsequent Developments in
Oklahoma Law

Petitioners submit that the opinion of the Oklahoma Court of Criminal Appeals in Stouffer v. State, 742 P.2d 562, 563 (Okla. Crim. App. 1987) (on rehearing) is a response to the Tenth Circuit's en banc ruling to comply with the law as interpreted, and to overcome the difficulty it has been having in achieving successful review of Oklahoma capital sentences by the Tenth Circuit.

The existence of other statutory aggravating circumstance establishes that the class of persons eligible for the death penalty has been sufficiently narrowed in accordance with constitutional demands. See Part II, Brief of Petitioners. Furthermore, under the post-Cartwright approach of the

Oklahoma Court of Criminal Appeals, that court has reweighed circumstances and affirmed a death sentence in which only one statutory aggravating circumstance apart from an invalid especially heinous, atrocious or cruel circumstance was found. Castro v. State, 745 P.2d 394 (Okla. Crim. App. 1987), on rehearing ___ P.2d ___, 59 O.B.A.J. 355 (Okla. Crim. App. Nov. 24, 1987). Thus, it is appropriate to discuss the existence of the other statutory aggravating circumstance that was found by the sentence.

The Defendant asserts that Oklahoma does not attempt to establish that this particular statutory aggravating circumstance "has been narrowed by judicial construction as required by Godfrey ." The Defendant's

brief at 11. The plurality in Godfrey never explicitly held that serious physical abuse was a requirement for finding a murder to be "outrageously or wantonly vile, horrible and inhuman." Unlike the present case, in Godfrey: 1) only the statutory language was given to the jury by instruction; 2) only one statutory aggravating circumstance was found; and 3) the Georgia Supreme Court had never reversed a finding of the circumstance.

In the present case, the jury was given the definitional instructions of State v. Dixon, 283 So.2d 1, 9 (Fla. 1973) to which reference was made in Proffitt v. Florida, 428 U.S. 242 (1976). A second aggravating circumstance was found, that the defendant knowingly created a great

risk of death to more than one person. And, the Oklahoma Court of Criminal Appeals previously had invalidated a finding of the circumstance on appeal. Odum v. State, 651 P.2d 703 (Okla. Crim. App. 1982). Thus, Oklahoma submits that Godfrey is not controlling herein.

In addressing the limitations of the especially heinous, atrocious or cruel aggravating circumstance, Oklahoma contends that the Oklahoma circumstance and the Georgia (b)(7) circumstance challenged in Godfrey are "virtual equivalent[s]." Defendant's brief at 15. The Georgia circumstance, however, contains no limiting terms within its statutory language as does the Oklahoma circumstance. Oklahoma submits that, just as the adjective

"mere" validates an anti-sympathy instruction, see California v. Brown, 107 S.Ct. 837, 840, 843 (1987), the term "especially" narrows the class of persons eligible for a finding of the "especially heinous, atrocious or cruel" circumstance.

The Defendant failed to challenge Oklahoma's assertion that reliance upon such factors as the killer's attitude and the manner of the killing are no more "subjective" than a finding of future dangerousness and reliance upon a non-statutory aggravating circumstance, which have been approved by this Court, as was discussed in Part I B of Petitioners' brief. Thus, Petitioners submit that the Defendant concedes the validity of this issue.

Regardless of the permissibility of subjectivity in sentencing, the Defendant is within the class of persons eligible for the death sentence as he knowingly created a great risk of death to more than one person. See Lowenfield v. Phelps, 108 S.Ct. 546 (1988).

REPLY TO SUPPLEMENTAL BRIEF

The Defendant cites to the recent opinion of the Oklahoma Court of Criminal Appeals in Brown v. State, ___P.2d___, 59 O.B.A.J. 893, 896 (Okla. Crim. App. March 23, 1988) as recognition by that court that it previously had interpreted the "especially heinous, atrocious or cruel" aggravating circumstance contrary to constitutional standards.

Oklahoma submits that jurisdiction for resolving the constitutionality of the "especially heinous, atrocious or cruel" circumstance as previously interpreted continues to remain a question for this Court's resolution because both the decision of the Tenth Circuit and the Oklahoma Court of Criminal Appeals' change in interpretation rest upon federal constitutional standards. See Michigan v. Long, 463 U.S. 1032, 1040-42 (1983). As well resolution of this issue by this Court is important to create some uniformity in interpretation among the States employing this aggravating circumstance or its functional equivalent which does not presently exist, see Rosen, The "Especially Heinous" Aggravating Circumstance in

Capital Cases - The Standardless
Standard, 64 N.C.L. Rev. 941 (1986).

CONCLUSION

The judgment of the United States
Court of Appeals for the Tenth Circuit
should be reversed.

Respectfully submitted,

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